

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 12548 of 2003

Date of decision: 06.01.2009

Principal, Govt. College, Loharu (Bhiwani)

.....PETITIONER

VERSUS

Rajpal and others

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. D.S.Nalwa, Addl. A.G. Haryana,
for the petitioner.

None for respondent No. 1.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Through this writ petition, the award dated 23.05.2002 (Annexure P-7) has been challenged by the petitioner. It is not in dispute that respondent No. 1 was initially appointed on 01.12.1991 as Beldar-cum-Mali on daily wage basis on Deputy Commissioner's rate. His services were terminated on 05.10.1992. During the conciliation proceedings, a settlement was arrived at between the parties on 11.11.1992 wherein the workman-respondent No. 1 was taken back in service without back wages. Thereafter, he joined his services on 18.01.1993 to be terminated again on 28.02.1993. This termination was challenged by respondent No.1-workman and an award in his favour was passed on 28.11.1997. Respondent No. 1 continued with the petitioner when he was again removed from service on 30.06.1998 on the ground that sanction was not received for continuing

respondent No. 1 in service from the competent authority i.e. the Director, Higher Education, Haryana.

It is not in dispute that respondent No. 1 had continued with the Management from 01.12.1992 to 30.06.1998 when his services were terminated and the provisions of Section 25-F of the Industrial Disputes Act, 1947 have not been complied with although the position with regard to the short break in service would be covered by the settlement arrived at between the parties on 11.11.1992.

Counsel for the petitioner has submitted that from the award itself, it is apparent that the service of respondent No. 1 was terminated on the ground that there was no further sanction on the post on which respondent No. 1 was continuing and, therefore, the question of reinstatement of respondent No. 1-workman did not arise in the absence of the post on which he was working. Further he submits that even if he has completed 240 days in one calendar year, such workman is not entitled to be reinstated against a public post when the engagement of the workman was not in terms of the Recruitment Rules and after giving an opportunity to all eligible candidates. He has relied upon the judgments of the Hon'ble Supreme Court in the cases reported as **Ghazibad Development Authority and another vs. Ashok Kumar and another**, 2008 (4) SCC 261, **Mahboob Deepak vs. Nagar Panchayat, Gajraula**, (2008) 1 SCC 575, **M.P. Administration vs. Tribhuwan**, (2007) 9 SCC 748 and **State of M.P. and others vs. Lalit Kumar Verma**, (2007) 1 SCC 575 to contend that the posts under the State are required to be filled up in terms of the Recruitment Rules and by inviting applications from all eligible candidates. It has been contended that the respondent-workman was engaged on daily wages without following the rules and principles of Articles 14 and 16 of the Constitution and, therefore, no reinstatement could have been ordered and

that too along with full back wages.

None has put in appearance on behalf of respondent No. 1. I have, with the assistance of the counsel for the petitioner, gone through the records of the case and the impugned award dated 23.05.2002 (Annexure P-7) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak. A perusal of the same would show that the workman was engaged against a public post on daily wages. Such engagement was not in terms of the Recruitment Rules applicable to the post or by giving opportunity to all eligible candidates to apply and to be considered for appointment. Therefore, in view of this position, the workman cannot be ordered to be reinstated. Further, the workman being a daily wager, his employment was terminable and Section 25-F of the Industrial Disputes Act, 1947 will not be attracted in such a situation, as held in **Municipal Council, Samrala vs. Raj Kumar**, 2006 (3) SCC 81.

In view of the above, I am of the opinion that the award dated 23.05.2002 (Annexure P-7) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak, granting reinstatement and back wages to the workman is not sustainable. Consequently, the said award is set aside. Since the workman has worked for sufficient period with the petitioner, I deem it appropriate to grant compensation of Rs. 60,000/- to settle equities between the parties.

This writ petition is allowed. However, the petitioner is directed to pay compensation of Rs. 60,000/- to the respondent-workman within a period of four months from the date of receipt of a copy of this order.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

January 06, 2009

pj